

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

Hus Hari Buljic individually and as Administrator of the Estate of Sedika Buljic, Honario Garcia individually and as Administrator of the Estate of Reberiano Leno Garcia, and Arturo de Jesus Hernandez and Miguel Angel Hernandez as Co-Administrators of the Estate of Jose Luis Ayala, Jr.,

Plaintiffs,

vs.

Tyson Foods, Inc., Tyson Fresh Meats, Inc., John H. Tyson, Noel W. White, Dean Banks, Stephen R. Stouffer, Tom Brower, Tom Hart, Cody Brustkern, John Casey, Bret Tapken, and James Hook,

Defendants.

Case No. 6:20-cv-02055-KEM

MOTION TO STAY REMAND ORDER

Defendants Tyson Foods, Inc., Tyson Fresh Meats, Inc., John H. Tyson, Noel W. White, Dean Bank, Stephen R. Stouffer, Tom Brower, Tom Hart, Cody Brustkern, John Casey, Bret Tapken, and James Hook (collectively “Defendants”), by and through their undersigned counsel, state as follows:

1. This matter was removed from state to federal court pursuant to 28 U.S.C. § 1442, the federal officer removal statute. (Dkt. 1)
2. On December 28, 2020, the Court entered an order granting Plaintiff’s Motion to Remand (Order). (Dkt. 57)

3. Pursuant to 28 U.S.C. 1447(d), the Court's Order was appealable as of right and Defendants filed a Notice of Appeal on December 31, 2020 (Dkt. 58), which has been docketed in the Eighth Circuit Court of Appeals, CS no. 21-1010.

4. For reasons detailed more fully in Defendants' Brief in Support of Motion to Stay, a stay pending resolution of that appeal is justified both because a stay is necessary to effectuate Congress's decision to grant an appeal as of right and because Defendants readily satisfy the standard for a stay under *Nken v. Holder*, 556 U.S. 418, 425-26 (2009).

5. Defendants accordingly request the Court grant a stay pending resolution of Defendants' already docketed appeal.¹

6. Undersigned defense counsel from Finley Law Firm P.C. have personally conferred in good faith with opposing counsel and they do not consent to this motion.

WHEREFORE, for these and other reasons detailed in Defendants' Brief in Support of Motion to Stay Remand Order, Defendants respectfully request that the Court enter a stay of the remand order pending a ruling by the Eighth Circuit Court of Appeals.

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¹ The remand order is currently stayed automatically under Federal Rule of Civil Procedure 62(a) until January 27, thirty days after the order was issued. See Fed. R. Civ. P. 62(a) (automatically staying "execution on a judgment and proceedings to enforce it ... for 30 days after its entry"); see also Fed. R. Civ. P. 54(a) (defining "judgment" to include any appealable order); *W. Va. State Univ. Bd. of Gov'r's v. Dow Chem. Co.*, 2020 WL 3053542, at *1 (S.D. W. Va. June 8, 2020) (recognizing that automatic stay under Rule 62(a) applies to remand orders in federal officer removal cases); *Tenn. ex rel. Slatery v. TVA*, 2018 WL 3092942, at *1 & n.3 (M.D. Tenn. June 22, 2018) (same); *Northrop Grumman Tech. Servs., Inc. v. DynCorp Int'l LLC*, 2016 WL 3180775, at *1 (E.D. Va. June 7, 2016) (same).

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CERTIFICATE OF SERVICE

This is to certify that, on January 8, 2021, a true and correct copy of the foregoing document was served upon all counsel of record via the Court's CM/ECF system as follows:

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